

10.10.2023.
Item no. 8.
Court No.19
ap

C.O. No. 1562 of 2023
Paresh Chandra Saha & Ors.
Versus
Smt. Jhunu Sanyal & Ors.

Mr. Partha Pratim Roy,
Mr. Sajal Kanti Bhattacharyya,
Mr. Sarthak Burman.

...For the petitioners.

Mr. Pinaki Ranjan Mitra,
Mr. Tulsi Das Maiti,
Mr. Pradip Kumar Ghosh.

...For the opposite parties.

The revisional application arises out of an order dated 6th May, 2023 passed by the learned Additional District Judge, Nabadwip at Nadia in Misc. Appeal No. 09 of 2021. The Misc. Appeal arises out of Title Suit No. 88 of 2021.

By the impugned order, the Misc. Appeal was allowed on contest. The order of the learned Civil Judge (Junior Division) Nabadwip at Nadia, rejecting the prayer of the plaintiff for temporary mandatory injunction, was set aside.

By the order impugned, the defendant nos.1 to 3/petitioners, were directed to remove the padlock from the entrance gate of the suit property and were also restrained from making any disturbance with regard to the peaceful possession and enjoyment of the suit property by the plaintiffs.

Being aggrieved, this revisional application has been filed on the following grounds:

- (a) In a suit for declaration and injunction, without any prayer for recovery of possession, the learned lower appellate court could not have directed removal of the padlock;
- (b) Direction for removal of the padlock was in the nature of allowing the main relief in the suit;
- (c) The plaint case was that the padlock had been put by the defendants by taking advantage of the absence of the plaintiffs. That the defendants had restrained the plaintiffs from enjoying the suit property.
- (d) The suit was filed with several reliefs, including the relief of mandatory injunction, directing the respondents to remove the padlock from the entrance gate of the suit property and not to create any hindrance in the running of the business, which was being carried from the suit property.

Mr. Mitra, learned advocate appearing on behalf of the plaintiffs submits that when a person is wrongfully dispossessed, the Court can pass necessary orders for protection of the person and his possession.

Thus, taking into account the facts and circumstances of the case, the order impugned was passed, directing the defendants to remove the padlock.

I have heard the learned counsel for the respective parties.

It appears from the order of the Trial Judge that the prayer for mandatory injunction directing the defendant nos.1 to 3 to remove the padlock from the entrance gate of the suit property was not granted, as the plaintiffs were not in a position to show that they were in possession of the property in question when the suit was filed. The plaintiff could not show that dispossession occurred subsequently. When the suit was filed, the contention of the plaintiffs was that the defendants had put the padlock at the entrance gate of the property.

Such order was challenged in the Misc. Appeal and the learned lower appellate court held that the Arpannama executed in the year 1970 recorded the name of Ramendra Nath Sanyal. The plaintiffs claim through Ramendra Nath Sanyal. By virtue of a Will, the defendant no.4 was bequeathed such part of the property in question. The Will was executed after the name of Ramendra Nath Sanyal (predecessor of the plaintiffs) had been recorded in respect of the property in question. The Court found that grant of Probate in favour of the defendant no.4 would not confer any title.

In my view, the learned lower appellate court proceeded on the basis of the title, rights and liabilities of the parties in respect of the property in question, whereas, the only issue to be decided was whether the padlock should be directed to be removed by issuing an order of temporary mandatory injunction.

The learned Trial Judge had rightly held that as the plaintiffs could not show that they were in possession of the property and dispossession had taken place after the suit was filed, the question of passing a temporary mandatory injunction for removal of the padlock, would not arise.

In my view, the positive case of the plaintiffs is that the padlock was put by the defendants in the entrance gate of the suit property before the suit was filed. For such action of the defendant, the suit was filed with a prayer for a decree of mandatory injunction for removal of the padlock. Such prayer was one of the main reliefs in the suit.

The revisional application succeeds and the order impugned is set aside.

However, this Court is of the view that the suit should be disposed of expeditiously, preferably within a period of eight months from the next date fixed, without granting any unnecessary adjournments to either of the parties.

There will be, however, no order as to costs.

(Shampa Sarkar, J.)